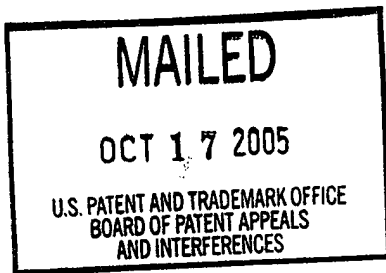


The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**



Ex parte WILLIAM R. VOIGT
and
DENNIS F. SAUER

Appeal No. 2005-1320
Application No. 09/766,025

ON BRIEF

Before FRANKFORT, McQUADE, and NASE, Administrative Patent Judges.
NASE, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 to 5, 7 to 10 and 12 to 14, which are all of the claims pending in this application.

We REVERSE.

BACKGROUND

The appellants' invention relates to a rotary helical cutter with replaceable straight flat blades (specification, p. 1). A copy of the claims under appeal is set forth in the appendix to the appellants' brief.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Meis	5,163,490	Nov. 17, 1992
Samuels et al. (Samuels)	6,247,389	June 19, 2001

Claims 1, 3 to 5, 7, 8 and 12 to 14 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Samuels.

Claims 9 and 10 stand rejected under 35 U.S.C. § 103 as being unpatentable over Samuels.

Claim 2 stands rejected under 35 U.S.C. § 103 as being unpatentable over Samuels in view of Meis.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejections, we make reference to the final rejection (mailed July 14, 2003) and the answer (mailed May 19, 2004) for the examiner's complete reasoning in support of the rejections, and to the brief (filed April 7, 2004) and reply brief (filed July 19, 2004) for the appellants' arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by the appellants and the examiner. As a consequence of our review, we make the determinations which follow.

The anticipation rejection

We will not sustain the rejection of claims 1, 3 to 5, 7, 8 and 12 to 14 under 35 U.S.C. § 102(e) as being anticipated by Samuels.

Anticipation is established only when a single prior art reference discloses, expressly or under the principles of inherency, each and every element of a claimed invention. RCA Corp. v. Applied Digital Data Sys., Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984). In other words, there must be no difference between

the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention. Scripps Clinic & Research Found. v. Genentech Inc., 927 F.2d 1565, 1576, 18 USPQ2d 1001, 1010 (Fed. Cir. 1991).

There is one basic difference between the rotary cutter of Samuels and the rotary cutter disclosed by the appellants. In the rotary cutter disclosed by the appellants, a groove contains four base support surfaces joined to each other in the axial direction as schematically shown in Figure 9. These joined four base support surfaces support four cutter blades such that the base of each of the cutter blades is seated on one of the base support surfaces. A clamp member holds each cutter blade in the groove. In the rotary cutter of Samuels, a groove contains one base support surface extending from end to end in the axial direction as schematically shown in Figure 5A. This base support surface supports one cutter blade such that the base of the cutter blade is seated on the base support surface. A clamp member holds the cutter blade in the groove.

The question before us in this appeal is whether or not this difference is set forth in the appealed claims. It is our view that this difference is set forth in the appealed claims. It is our determination that all the claims under appeal require the bases of a plurality cutter blades to be seated on one of the base support surfaces that are

perpendicular to the first wall plane of a first groove wall and wherein all the base support planes that are perpendicular to said first groove wall intersect each other. Since Samuels teaches only one blade, not a plurality of blades, seated on each base support surface,¹ the claimed invention is not anticipated by Samuels.

For the reasons set forth above, the decision of the examiner to reject claims 1, 3 to 5, 7, 8 and 12 to 14 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Samuels is reversed.

The obviousness rejections

We have reviewed the teachings of Samuels and Meis but find nothing therein which makes up for the deficiency of Samuels discussed above. Accordingly, the decision of the examiner to reject claims 9 and 10 under 35 U.S.C. § 103 as being unpatentable over Samuels is reversed and the decision of the examiner to reject claim 2 under 35 U.S.C. § 103 as being unpatentable over Samuels in view of Meis is reversed.

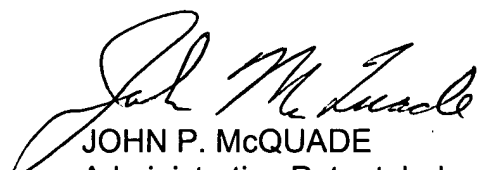
¹ See the support surfaces identified as FBSS and SBSS in the marked-up version of Figure 5C contained on page 6 of the final rejection.


CONCLUSION

To summarize, the decision of the examiner to reject claims 1, 3 to 5, 7, 8 and 12 to 14 under 35 U.S.C. § 102(e) is reversed and the decision of the examiner to reject claims 2, 9 and 10 under 35 U.S.C. § 103 is reversed.

REVERSED


CHARLES E. FRANKFORT
Administrative Patent Judge


JOHN P. McQUADE
Administrative Patent Judge


JEFFREY V. NASE
Administrative Patent Judge

)
)
)
)
) BOARD OF PATENT
) APPEALS
) AND
) INTERFERENCES
)
)
)
)

Appeal No. 2005-1320
Application No. 09/766,025

Page 7

REISING, ETHINGTON, BARNES, KISSELLE,
LEARMAN & MCCULLOCH, P.C.
5291 COLONY DRIVE NORTH
SAGINAW, MI 48603

JVN/jg